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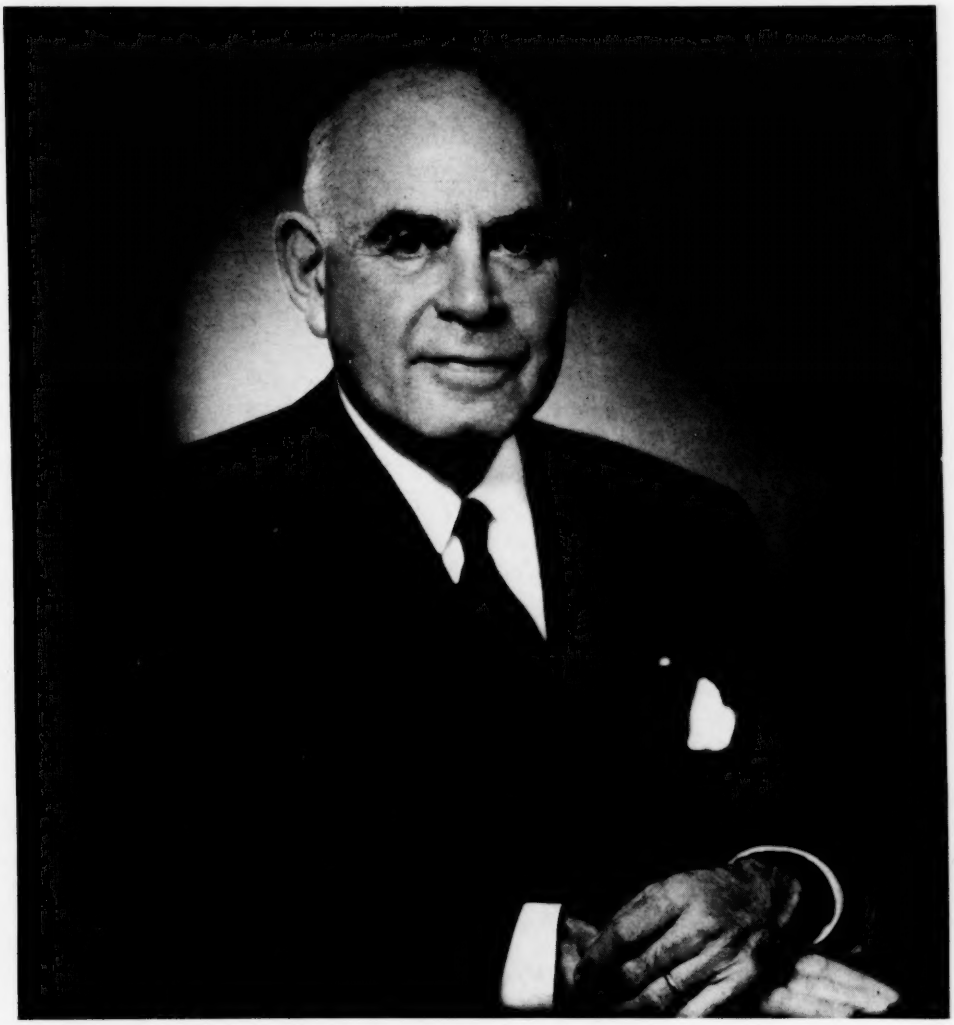

HERBERT H. LEHMAN

RECIPIENT OF THE DECALOGUE AWARD, 1955

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IN THIS ISSUE

Reservations for Decalogue Annual Affair Still Available

Requests for reservations for the Decalogue Twenty-First Annual Merit Award Dinner, which will be held in the Palmer House Grand Ballroom on Saturday, February 18 continue at an unprecedented rate. Chairman of the arrangements committee, Morton Schaeffer and Marvin Victor, chairman of the Ticket Sales committee announce that the selection of Senator Herbert H. Lehman of New York has met with the strong approval of the legal profession and the community. The price of admission is $8.50 per person.

Orders for tickets should be sent to the Decalogue Society Headquarters at 180 West Washington Street, Chicago 2, Illinois.

MEMBERSHIP MEETING ON MARCH 20

An important meeting of the membership of The Decalogue Society of Lawyers will be held at the Chicago Bar Association on Tuesday, March 20th at 8:00 P.M. At this meeting the long postponed, proposed amendments to the Constitution of the Society limiting tenure on the Board of Managers of past presidents and others will be debated and voted upon. The full text of the proposed amendments was published in an earlier issue of The Journal and will be repeated in a formal notice to be sent to the entire membership.

Entertainment will also be provided. Arrangements for this meeting have been completed by a committee consisting of Meyer Weinberg, chairman, Morton Schaeffer, Solomon Jesmer, and Elmer Gertz.

INTER-AMERICAN BAR CONFERENCE

Robert F. Storey, President of the Inter-American Bar Association announces that the ninth conference of the association will be held in Dallas, Texas, April 16 to 21, 1956. The Decalogue Society of Lawyers is a member of the Inter-American Bar Association.

For further details regarding credentials, hotel reservations, and the agenda of the conference, please address past president Jack E. Dwork at 77 West Washington Street. Mr. Dwork is chairman of the Decalogue section of the Inter-American Bar Association.

HERBERT H. LEHMAN—STATESMAN AND HUMANITARIAN

America is a nation born of a great ideal, and as long as the nation survives, that ideal must and will be cherished and preserved. Within this framework, Jewish history teaches that spiritual ideals, in a people as well as in individuals, give strength and endurance transcending material wealth and power.

—HERBERT H. LEHMAN

Senator Herbert Henry Lehman, four times governor of New York State, the recipient of The Decalogue Society of Lawyers Award of Merit for 1955, was born in New York City in 1878. He received his A.B. degree from Williams College in 1899. The Lehman family had been in the cotton and textile business since their arrival in the United States after the 1848 revolution in Germany. Young Lehman did not become associated with the family firm, but entered the cotton goods business as a salesman with the J. Spencer Turner Company in New York City. He advanced rapidly and in 1906 was made vice-president and treasurer of the company. In 1908 he left to become a partner in his family's banking business.

At the outbreak of World War I in 1914, he became associated with the Joint Distribution Committee and directed the collection and disbursement of $75,000,000 for the relief of Jewish war sufferers in Europe and Palestine. Later he became a civilian assistant to Franklin D. Roosevelt, then Assistant Secretary of the U. S. Navy; by April 1919 he had been promoted to the rank of colonel. He aided General George W. Goethals in supervising the purchase, storage and distribution of material for the American Expeditionary Force. After the war, he was appointed a special assistant to Newton D. Baker, Secretary of War, and served as a member of the Contract Adjustment and War Department Claims Boards. In 1919 he received the Distinguished Service Medal.

In 1929, among New York city financial institutions which collapsed, was the City Trust Company. Thousands of small depositors lost virtually all their savings. As a result of the investigation that followed the bank's closing, the state superintendent of banks was sent to prison. Lehman's concern for the depositors caused him to summon a group of bankers who formed a corporation to take over the assets of the City Trust Company. The depositors were paid off dollar for dollar. A million dollars of Lehman's funds went into the corporation. He did not recover any of that amount.

One of the most difficult problems that confronted Lehman during his governorship was the finances of the State. Lehman perfected and put into effect a welfare system and a program for unemployment insurance that became outstanding examples of governmental methods of handling these difficulties. His eight-point social security plan became a model for national government as well as other state governments.

In May 1936, the journalist Hickman Powel did an exhaustive "Profile" on Lehman, then Governor of New York, in the New Yorker Magazine. It was a thorough study of the philosophy, achievements, background, and the public and private life of the popular New York State chief executive:

> In Governor Lehman's record there are seeming inconsistencies that suggest a kind of painstaking virtuousness. A banker, he rewarded Ferdinand Pecora for his exposure of banking scandals by making him a Supreme Court Justice. A security salesman, he forced the passage of public-utility legislation which spread terror among owners of watered stock. A Tammany officeholder, he aided Mayor La Guardia in his more substantial municipal reforms. A former director of large industrial corporations, he is New York's most effective proponent of advanced labor and social-welfare legislation. After being called a liar by Robert Moses in the 1934 campaign, he made a point of praising Mr. Moses' work at every opportunity and refused to support Farley's proposal that Mr. Moses be thrown out of his state-park jobs.

In December 1942, at Roosevelt's request, he became head of the newly created Office of Foreign Relief and Rehabilitation Operations (OFRRO). Lehman defined the aim of the agency with the following quotation: "Our

enemy is fighting to enslave mankind; we are fighting to make men free. We must feed and clothe and find shelter for the millions whose lives have been disrupted by the war." Lehman plunged into his duties with characteristic vigor: he made speeches, wrote articles, and took his first plane trip for the cause.

In November 1943, Lehman was chosen as director-general of the United Nations Relief and Rehabilitation Administration. Repeatedly and urgently, he labored to arouse public interest in the agency's work and the government's support of its vast obligations. In his final report to the UNRRA Council in 1946, he recommended the formation of an international food control board and warned that unless the International Bank for Reconstruction and Development was fully prepared to assume relief responsibilities when UNRRA ended, the United Nations would lose all it had gained in military victory. The United States, Italy, Czechoslovakia, and China decorated him for his work with UNRRA. After his defeat in the November 1946 election as a candidate for the U. S. Senate from New York by Republican Irving M. Ives, he served for the next three years on numerous private boards and commissions. In 1948 he was named a member of the advisory board of the Economic Cooperation Administration. In the special election of November 1949, Lehman won out as United States Senator over John Foster Dulles, to complete the late Senator Wagner's term, and was re-elected a year later for a full six year term, which he is now completing.

An ardent champion of a liberal immigration policy, Senator Lehman has been indefatigable in his efforts to repeal or at least amend the McCarran-Walter Act. Almost from the day that it passed the Congress, he has been incessantly trying to arouse public opinion against this law and to enlist the sympathies and interest of fellow legislators to remove it from our Federal Statutes.

At a hearing before the President's Commission on Immigration and Naturalization in 1952, he testified:

> . . . Basic questions of law, of justice, and of civil liberties are involved. The very meaning of the word "citizen" is at issue. And, of course, our foreign policy is deeply affected and involved.
>
> To most people, both lawyers and laymen, immigration law is a complex and confused mystery. It is a field for specialists and even the specialists are frequently lost in the mazes and jungles of our immigration laws. These laws have grown up like a jungle. That jungle has served to hide from the public view a set of concepts which, I believe, would shock the moral sense of the American public if the people realized their implications. But the concepts and laws, buried deep in this legal jungle, have become surrounded through the years by what we might call protective taboos. These taboos have no basis, in my opinion, in reason or morality. Yet these taboos have been completely effective in protecting these laws against amendment or repeal. . . .

A patriot and an uncompromising believer in the soundness of American institutions, he has fought to preserve them. He said this at a meeting in Chicago in 1953, sponsored by the National Community Relations Council:

> We must prove to individual people that the practices of mccarthyism have weakened and not strengthened our resistance to Communism, that they have frayed the fabric of our civil liberties, disrupted the morale of our Government employees, sowed distrust and suspicion among us, one neighbor of another, and now threaten the very independence of our press, our schools and even our churches—and that by these effects mccarthyism has significantly weakened the foundations of our strength to oppose Communism and Communist tyranny.

Senator Lehman's outspokenness, integrity, and unremitting regard for the welfare of his fellow citizens won him national acclaim and tremendous popularity among the masses of American Jewry. In an article in Look Magazine for November 1955, entitled "The Position of the Jew in the United States" the writer, William Attwood, states:

> I asked almost every Jew I met for the names of the five top leaders of U. S. Jewry. Their answers differed widely; in fact, there was general agreement about only one man—Senator Herbert H. Lehman of New York.

Now, after nearly fifty years in active political life, Senator Lehman commands the utmost respect of friend and foe alike for a full lifetime of enlightened political leadership. An astute statesman, his is a most enviable record of devotion to the common good of all Americans. He is in the forefront of the fight for civil rights, F.E.P.C. legislation, national preparedness, the curbing of juvenile delinquency, and the conservation of our national resources. "Few men in our history," said Senator Lyndon B. Johnson recently, "have had such a brilliant career."

Today, at the age of 77, Senator Herbert H. Lehman is vigorously at his desk, in the Halls of Congress, on the public platform, and in the councils of his fellow Americans, Christians and Jews, everlastingly at the job of furthering the welfare of our country,—indeed of all mankind.

Simple and direct is his personal creed. He states it thus, in Edgar Murrow's *In This I Believe*:

Throughout my long and rather busy career I have always held firmly to the belief that I owe life as much as it owes to me. If that philosophy is sound, and I believe it is, it applies, I hope, to all of my activities—to my home, to my daily work, to my politics, and above all things to my relationships to others.

EDITOR

JACK E. DWORK, Chairman

Past president Jack E. Dwork was chairman of the Decalogue Society Merit Award committee which selected Senator Herbert H. Lehman the recipient of the Decalogue Annual Award for 1955.

Great Books Program

Oscar M. Nudelman and Alec E. Weinrob, leaders of the Decalogue Society Great Books discussion group, announce the following titles of remaining five classics to be discussed this season, and dates when sessions will be held:

February 20 — Voltaire: Candide

March 5 — Rousseau: The Social Contract Books I-II

March 19 — Gibbon: The Decline & Fall of the Roman Empire, Chapters XV-XVI

April 2 — Dostoyevsky: The Brothers Karamasov, selections

April 16 — Freud: The Origin & Development of Psychoanalysis

The group meets at the offices of the Society at 180 West Washington Street, at 6:15 P.M. for a period of two hours. All members and their friends are invited to come and participate in the discussion.

Enrollment in Blue Cross and Blue Shield to Reopen April 1

Members are advised that commencing April 1, 1956 and extending to April 30, 1956, registration will be reopened for enrollment in the Blue Cross and Blue Shield Insurance Plan for hospital and medical care. Members now holding Blue Cross may apply for the Blue Shield Medical Care Plan. The insurance will be in force commencing June 1, 1956.

The rates are as follows, including 25c service charge for handling the Blue Cross group only, and 50c service charge for handling the Blue Cross and Blue Shield group:

	Blue Cross Rate Quarterly	Blue Cross and Blue Shield Quarterly
Single member	$ 7.21	$ 9.71
Family member	19.21	26.96

Members desiring to enroll are requested to send their names and addresses to the Decalogue Headquarters so that an application may be sent and processed in ample time. Please indicate classification that you are interested in: Blue Cross, Blue Shield, single, or family, and mail to the Decalogue Society Headquarters, 180 West Washington Street, Chicago 2, Illinois.

Alec E. Weinrob is chairman of the Decalogue Society Insurance Committee.

DECALOGUE LIBRARY

Louis J. Nurenberg, chairman of the House and Library Committee reports that The Decalogue library at its offices at 180 West Washington Street, has been steadily augmented to a point where it now has a complete set of reports and digests for use of Decalogue members practicing in the Federal Courts, as well as those engaged in Illinois practice.

In addition, the library maintains up-to-date tax loose-leaf services, legal periodicals and text books, including among the latter some written by Society members. The library is non-circulating.

NATION ACCLAIMS DECALOGUE CHOICE

Published below are excerpts from letters that have reached the President of our Society at the time this issue went to press. The next issue of The Decalogue Journal will contain, it is expected, more comments.

He is an extremely fine man whose work I watch with a great deal of interest and whose friendship I value very much.

SENATOR CLINTON P. ANDERSON, New Mexico

* * *

. . . He has held many high and responsible positions in public life, both in his State and in the Nation, and he has acquitted himself with distinction and honor in all of them. I am sure no more worthy a selection could have been made. . . .

SENATOR ALBEN W. BARKLEY, Kentucky

* * *

No one is more entitled to this distinguished honor than is Senator Lehman. He has had a long and great and distinguished record of service to the people of his state as Governor and to the people of our country as a United States Senator. He is a great American judged by any standard.

SENATOR FRANK A. BARRETT, Wyoming

* * *

I think your selection of Senator Lehman is an obvious one. I am sure measured in terms of service to your people he has an outstanding record.

SENATOR WALLACE F. BENNETT, Utah

* * *

. . . The Decalogue Society has chosen a man, who in my opinion is a true statesman and who measures up to the original concept of a senator in that he strives to serve the entire nation rather than his own state exclusively.

JULIAN BENTLEY
Director of News, WBBM, WBBM-TV

* * *

I wish to congratulate you on selecting this great American for your Award.

JUSTICE HUGO L. BLACK, *Associate Justice*
Supreme Court of the United States

* * *

His fine reputation as a great civic leader and outstanding public servant is nationally, if not internationally known. His liberal thought and action, expressed in the great stand that he has taken on matters of public interest, has endeared him to many millions of his fellow-citizens of the United States. . . .

JUDGE JOHN F. BOLTON, *Chief Justice*
Superior Court of Cook County

I regard Senator Lehman as one of the great statesmen of our nation. His support in the face of great opposition and even popular misunderstanding of the civil rights of individuals and minorities should endear him to every American of proper instincts.

AUGUSTINE J. BOWE, *President*
Chicago Bar Association

* * *

The Decalogue Society of Lawyers, as an organization of lawyers and judges of the Jewish faith, does itself honor in selecting Senator Herbert H. Lehman of New York as a distinguished American worthy of receiving its Award of Merit for outstanding service.

SENATOR FRANCIS CASE, South Dakota

* * *

For his distinguished service to both State and Federal governments, spanning more than a quarter of a century, Senator Lehman is richly deserving of this tribute. His championship of minority rights, and his uncompromising battle against intolerance in any form, have made his a living example of the finest American traditions. . . .

JUSTICE TOM C. CLARK, *Associate Justice*
United States Supreme Court

* * *

He is a man of integrity. He has won the confidence of the people by serving as the chief executive of the great state of New York and serving in the United States Senate. SENATOR CARL T. CURTIS, Nebraska

* * *

His career in public service as Governor of New York and as a member of the United States Senate has been a distinguished one and has been marked by great zeal and courage.

SENATOR EVERETT MCKINLEY DIRKSEN
Illinois

* * *

There is no nobler person in public life than Senator Herbert H. Lehman. He is modest to a fault, humble in spirit, but determined in his struggle for decency and human justice. Tireless and incorruptible, he has a tender heart and a sensitive conscience.

SENATOR PAUL H. DOUGLAS, Illinois

* * *

Senator Lehman has a distinguished career both in business and as a public official. He richly deserves the high honor which you will bestow upon him.

F. RYAN DUFFY, Chief Judge
United States Court of Appeals

I would greatly enjoy being with Senator Lehman's many friends and associates on this occasion. It would indeed be an honor for me to join with you in paying him this rich tribute he so rightly deserves.

JUSTICE WILLIAM O. DOUGLAS
Supreme Court of the United States

* * *

His devotion to public service, interest in people as individuals, and vigilance as to human rights are among his many fine qualities.

THOMAS S. EDMONDS, *President*
Illinois State Bar Association

* * *

. . . I know that his many friends are proud and happy that your Society will soon add the name of Herbert H. Lehman to its Roster of Distinguished Americans who have been the recipient of the Award of Merit. SENATOR J. ALLEN FREAR, Delaware

* * *

I regard Senator Herbert Lehman as a man of the highest character and a fine representative of the people of his state in the Senate of the United States. Senator Lehman has served with great distinction and honor, both in the government of his state and in the government of his nation.

SENATOR J. W. FULBRIGHT, Arkansas

* * *

Senator Lehman is a very industrious, hardworking and worthy representative of a great State.

SENATOR WALTER F. GEORGE, Georgia

* * *

His has been a notable contribution. Your selection is both appropriate and commendable.

SENATOR ALBERT GORE, Tennessee

* * *

Senator Lehman is a great American who is another example of the truth that in the great American melting pot you can have many loyalties without in any way impairing the loyalty you show to the American Nation and its basic principles of democracy.

JOHN GUTKNECHT
State's Attorney of Cook County

* * *

In selecting Senator Lehman for its Award of Merit, the Decalogue Society of Lawyers has been true to its tradition of honoring those who have been notable as champions of American democracy.

JUDGE LEARNED HAND, New York

* * *

Senator Lehman is a fine choice for your Award of Merit.

HAROLD C. HAVIGHURST, *Dean*
Northwestern University School of Law

. . . He is, perhaps, the Number One United States Senator of America in his constructive record of outstanding accomplishments and his clear vision of the needs of our America for today and for tomorrow.

Senator Lehman has conclusively shown the people of our entire country that it is possible to be a devoted Jew and a devoted American; that in the finest sense these high devotions strengthen each other.

BARNET HODES

* * *

The selection of Senator Herbert H. Lehman as the recipient of the Award of Merit by The Decalogue Society of Lawyers is a just and highly deserved recognition of Senator Lehman's many years of outstanding public service to the people of New York and to the nation.

SENATOR SPESSARD L. HOLLAND, Florida

* * *

. . . Senator Lehman has more than earned this honor and has established for himself a permanent place in the history of our times. . . .

SENATOR LYNDON B. JOHNSON, Texas

* * *

It has been a pleasure to work with Senator Lehman in the Senate as he has demonstrated much courage and wisdom as a legislator.

SENATOR OLIN D. JOHNSTON, South Carolina

* * *

. . . I have been impressed many, many times in my work in the Senate with the sincere devotion and self-sacrifice with which Senator Lehman has labored to advance these very causes which your Award covers. . . . SENATOR ESTES KEFAUVER, *Tennessee*

* * *

He is an advocate, and vigorous one, for those causes in which he believes. In some of them I have stood with him, and I have known in them the zeal and strength he has freely given to what we both believed the right. Where he and I have disagreed, I have seen him as an able adversary.

SENATOR THOMAS H. KUCHEL, California

* * *

He is an outstanding Senator and a great friend of the people. SENATOR WILLIAM LANGER, North Dakota

* * *

. . . A man like Senator Lehman should not be taken for granted and it pleases me very much, therefore, to see that he is getting some of the recognition he merits in Midwest America.

My respect and congratulations to the Society for this very wise choice.

LEO A. LERNER, *Editor and Publisher*
Chicago North Side Newspapers

Perhaps I am prejudiced in favor of the Senator, as he happens to belong to the same college fraternity as I do. But, irrespective of that fraternal relationship, I have followed for years his public career, and observed and admired his constructive statesmanship, as exemplified in his national legislative service, his unfailing honesty of purpose and intellect, and his devotion to American ideals and traditions.

JUDGE WALTER C. LINDLEY
United States Court of Appeals

* * *

Senator Lehman is a distinguished American, with a brilliant record in public service. In addition, he has been an unusual citizen, in private life as well. He has an enviable reputation as a family man, and as a spiritual leader of his faith.

STUART LIST, *Publisher,* Chicago American

* * *

I can think of no one in public life who deserves an Award of Merit more than Senator Lehman. Merit in the literal sense of that term is precisely what he has demonstrated for merit presumes honor and courage and honor and courage are the two great qaulities he has shown the Republic and the world.

ARCHIBALD MACLEISH

* * *

He joins a distinguished list of Award winners from The Decalogue Society, but the list grows in prestige with the addition of his name.

Working daily with Senator Lehman in the United States Senate, and seeing his activities in behalf of the State of New York, its citizens, the entire nation and the world, I can well understand the method of selection.

May the Merit Award continue to hold the high rank it now enjoys in the field of humanitarian service.

SENATOR WARREN G. MAGNUSON, Washington

* * *

In my opinion, Senator Herbert H. Lehman, who will be the recipient of your Award of Merit for outstanding service to the cause of democracy and the general welfare of the people, is one of the shining lights in our country—a man of great political courage, personal integrity and deep honesty. Senator Lehman is respected by members of both political parties. He has been a veritable "Rock of Gibraltar" in holding steadfast to his convictions and the United States is better off because of men like Senator Lehman. . . .

SENATOR MIKE MANSFIELD, Montana

* * *

It pleases me greatly to learn that one of my distinguished colleagues of the Senate is being so honored.

SENATOR EDWARD MARTIN, Pennsylvania

* * *

It has been my pleasure to work closely with Senator Lehman in the United States Senate, and I know him to be an outstanding citizen as well as statesman—worthy of the high honor your Society is bestowing upon him.

SENATOR PAT. MCNAMARA, Michigan

. . . Senator Lehman has no close competitor for the title of "The Giant of American Liberalism." It is not that others have done so little, but that he has done so much. It has been my privilege to work in daily contact with this great statesman and patriot and to observe his utter selflessness and dedication to the advancement of human dignity and democracy. He has no peer, whether judged by compassion or courage or morality. In the words of Shakespeare, "Here is a man"—

SENATOR WAYNE MORSE, Oregon

* * *

In my opinion, it would be impossible for your organization or any other similar one to choose a more deserving recipient than Senator Herbert Lehman for its highest Award of Merit either in 1956 or any other year. He is one of the very great men of the nation and the world.

SENATOR MATTHEW M. NEELY, West Virginia

* * *

In the comparatively brief time that I have been a member of the Senate, I have come to admire greatly Senator Lehman's qualities of humanitarianism, altruistic statesmanship and warm personal friendliness. Few members of the Senate have shown a greater compassion and understanding of the genuine problems of their fellow human beings.

SENATOR RICHARD L. NEUBERGER, Oregon

* * *

. . . I regard him as one of the soundest Americans of my acquaintance, endowed with integrity, ability and courage. He possesses a clear understanding of the principles of freedom. He has been an honor to his State and his Nation, and throughout his lifetime has never failed to respond to the call of service in the interests of the people. The Decalogue Society of Lawyers is honoring itself in honoring Senator Lehman.

SENATOR JOSEPH C. O'MAHONEY, Wyoming

* * *

Few men in public life today can surpass the outstanding record of achievement which Herbert H. Lehman has made as Governor of New York, Director of the United Nations Relief and Rehabilitation Administration and now as a United States Senator. He is a man of wisdom, broad experience and unusual courage. His combination of talents coupled with his record of achievement has earned for him the respect of leaders in every walk of national life.

SENATOR FREDERICK G. PAYNE, Maine

* * *

I am and always have been a great admirer of Senator Lehman, both as a Governor and as a Senator. He is a great humanitarian.

JUDGE JOSEPH SAM PERRY
United States District Court, Chicago

* * *

. . . I have worked with him as a colleague in the United States Senate, have seen the conscientiousness and patience with which he does his work there, and though we have often disagreed on legislative matters, we have remained friends over the years.

SENATOR LEVERETT SALTONSTALL, Massachusetts

Senator Lehman has certainly earned this distinction. I know of no one who has been more completely dedicated to the objectives for which your Award is made than Senator Lehman.

SENATOR JOHN SPARKMAN, Alabama

* * *

Selection of Senator Herbert Lehman for the 1955 Award reflects most favorably on both your Society, for its judgment, and Senator Lehman, for his public spirited accomplishments.

Senator Lehman is a colleague and friend. I know of no one in the United States Senate who is more sincere or fair in his beliefs and actions.

SENATOR STUART SYMINGTON, Missouri

* * *

. . . The senior senator from New York, with his fine training as a financier is known as one of the greatest Senators that the state of New York has produced. More power to him.

EDWARD R. TIEDEBOHL, *President*
Catholic Lawyers Guild of Chicago

* * *

I am very happy to learn that you are conferring the Decalogue Society's Annual Award on Senator Lehman. He is an outstanding citizen and has been a great Governor and a great Senator. I do not believe that you could have picked a man more deserving of the honor than he is.

HARRY S. TRUMAN

* * *

I wish you would extend my congratulations and best wishes to Senator Lehman for the recognition you have given to his outstanding public service.

EARL WARREN
Chief Justice of the United States

* * *

He is a fine upright citizen, and he has made great contributions in public service both to the Nation and to his home state of New York.

SENATOR MILTON R. YOUNG, North Dakota

LEO A. LERNER ON THE BILL OF RIGHTS

Leo A. Lerner editor and publisher of 19 community newspapers in Chicago and suburbs, addressed the Decalogue Society Forum on January 20, in the Covenant Club. He spoke on "Freedom of the Press—The Keystone of the Bill of Rights." Excerpts from Mr. Lerner's talk will appear in a near issue of The Decalogue Journal.

Mr. Lerner is the recipient of the Decalogue Annual Award of Merit for the year 1945.

Solomon Jesmer is chairman of the Decalogue Forum Committee.

Applications for Membership

MARVIN M. VICTOR, *Chairman Membership Committee*

APPLICANTS	*SPONSORS*
Perry Berke	Benjamin Weintroub and Samuel Berke
Maurice Burr	Benjamin Weintroub, Maxwell N. Andalman and Oscar M. Nudelman
Samuel D. Freifeld	Elmer Gertz and Max M. Forman
Joseph Glick	Benjamin Weintroub and Favil David Berns
Morris Haas	Murray Westler
Charles M. Holleb, Jr.	Benjamin Weintroub and Charles M. Holleb
Abram Holtzblatt	Benjamin Weintroub and Michael Gerrard
Howard P. Kamin	Benjamin Weintroub and Philip H. Mitchel
Burton A. Kolman	Maxwell N. Andalman
Samuel M. Rattner	Benjamin Weintroub and Morris Bromberg

Annes Active in Civic Affairs

Past president Paul G. Annes addressed a City Club Forum on December 5, on "American Policy in the Near-East." Mr. Annes is a former president of the City Club.

On January 21st he participated with other leaders of the American Jewish Congress in a radio broadcast on the subject "Religion in the Public Schools." The panel discussed the constitutional provision for the separation of Church and State and the violation of that principle whenever the *public* school is used for religious instruction or religious holiday celebrations of any group in the community.

PLACEMENT AND EMPLOYMENT

Michael Levin, chairman Decalogue Placement and Employment Committee, urges members seeking professional help to advise him of their needs. The names and addresses of several young, recently admitted lawyers in search of employment, are registered with the Committee. Mr. Levin's telephone is ANdover 3-3186.

IRVING GOLDSTEIN

Member Irving Goldstein was elected National Judge Advocate of the Jewish War Veterans organization of the United States.

Tort Liability of Religious and Charitable Institutions in Illinois

By SIDNEY Z. KARASIK

Member Sidney Z. Karasik has contributed to legal periodicals.

For over forty years, it had been the rule in Illinois that charitable (and religious) institutions are not liable for torts committed by their servants or agents. The leading case of *Parks v. Northwestern University*, (1905) [1] established that the doctrine of "immunity" barred the doctrine of *respondeat superior* where eleemosynary institutions were concerned. Immunity was granted on the consideration that if tort liability were admitted, "trust funds might be wholly destroyed and diverted from the purpose for which they were given, thus thwarting the donor's intent, as a result of negligence for which he was in no wise responsible; second, that since the trustees cannot divert the funds by their direct act from the purposes for which they were donated, such funds cannot be indirectly diverted by the tortious or negligent acts of the managers of the funds, or their agents or employees." [2]

Both reasons can be summed up as the "impairment of trust funds" theory. Another rationale implicit in the *Parks* case, and explicit in other decisions which follow the immunity doctrine [3], is that the public policy of encouraging donations to charities would be defeated by liability, and that therefore "the rights of the individual must in such cases be subordinated to the public good." [4]

Whether the immunity was absolute and jurisdictional, or whether qualified and waivable, was a question to be decided in cases after *Parks*. In *Marabia v. Mary Thompson Hospital* [5], where the defendant hospital petitioned to set aside a default judgment on the ground that the plaintiff had no cause of action against a charitable organization of which the court could take jurisdiction, it was held that a charitable corporation was under no disability to be sued, and if sued, must present its defenses if it wishes to contest the action. Where, however, the eleemosynary defense had been pleaded, the *Parks* case was followed almost without exception.[6] The "trust-fund" barrier to recovery was upheld where plaintiff sought to introduce an exception to the doctrine by fastening a liability on a charitable institution on the theory of negligence in the employment, selection or retention of incompetent servants who caused the tort.[7] Testing the trust fund basis for immunity by showing that the defendant hospital carried liability insurance, and that satisfaction of judgment would not touch trust funds, the plaintiff failed to overcome the immunity defense in *Piper v. Epstein*,[8] which construed the eleemosynary immunity of the *Parks* case as absolute, notwithstanding the presence of insurance. A directly opposite result where the existence of insurance was alleged was reached in *Wendt v. Servite Fathers*.[9] Since the *Piper* and *Wendt* cases posed a diametric conflict of authority in the Illinois Appellate Court (even in the same District), the occasion was ripe for another look at the *Parks* doctrine by the Illinois Supreme Court.

The occasion was *Moore v. Moyle*, (1950).[10] In that case, the plaintiff, a student at defendant Bradley University, a charitable corporation, was injured while practicing on a trapeze for a college circus. In her complaint, the plaintiff affirmatively alleged that the defendant carried ample liability insurance for the risk involved, and that a recovery of the judgment would not impair trust funds held for charitable purposes by the defendant. The defendant's motion to strike the complaint on the ground that as a charitable corporation it was exempt from liability for the tort complained of, was sustained by the lower court, affirmed by the Appellate Court, and affirmed by the Supreme Court on its first hearing.[11] On a rehearing, the Supreme Court reversed itself, (two Justices dissenting), and the lower courts remanded.

After reviewing the Illinois decisions and the law in other jurisdictions, the court held that the exemption of trust funds from tort liability, which it affirmed but qualified, does not extend to destroy liability or prevent judgment *respondeat superior* where non-trust funds may be involved. Purporting not to repudiate the *Parks* case, but to "extend" its rule in the light of modern conditions, *Moore v. Moyle* apparently took heed of extensive criticism of the immunity doctrine as lagging behind modern developments of charitable organizations, many of which, like private enterprises, have become "big business." Thus, the "public policy" basis for protecting eleemosynary defendants from tort liability is overridden by the public policy of affording relief to an injured plaintiff; i.e., it affronts public policy to deprive a wronged plaintiff of a remedy.[12] The court could have gone to the extent of finding that even the trust fund rationale of the *Parks* case has no realistic basis today,[13] but *Moore v. Moyle* expressly preserves "trust-fund" immunity.

"Simply stated," the Court observed, "the decision in the *Parks* case is merely that recovery is denied on the grounds of necessity for the protection of trust funds. . . . Extending the [Parks] rule, it would seem that no violence is done to [that] decision by allowing recovery, provided that trust funds or trust property are not subjected to payment of any judgment obtained for tort liability. It is argued that this would give rise to a situation which would create liability only in the event the charitable institution were insured, and it is suggested that liability is predicated upon the absence or presence of liability insurance. It is apparent that such is not the case, due to the fact

* Footnote Guide, see page 12

that the question of insurance in no way affects the liability of the institution, but only goes to the question of the manner of collecting any judgment which may be obtained. . . ." [14]

Moore v. Moyle stands for the proposition, then, that eleemosynary institutions are exempt, not from *liability*, but from *collection*, unless there are "non-trust funds" to satisfy judgments. Thus, in Illinois, a charitable institution is now liable for the torts of its agents and servants, and charitable exemption is presumably a post- not a prejudgment problem. Collecting a judgment obtained against a charitable defendant, whose funds are shielded by a trust, may be a problem, but not a problem differing from collecting from any judgment debtor of limited assets.

Alleging affirmatively the existence of non-trust funds in a complaint against a charitable defendant, as plaintiffs did in the *Wendt* and *Moore* cases, presumably is not indispensable to pleading a *prima facie* case.[15] In doing so, however, the plaintiff, while anticipating a defense of immunity (which may or may not be interposed), proceeds out of justifiable precaution. Since several questions about charitable immunity were not resolved by the *Moore* case, and indeed, because there is a lingering notion that an eleemosynary defendant may be immune, the practice of pleading insurance or other non-trust funds in the complaint is supported by the precedents, and moreover, serves to spread on the record at the pleading stage of the suit that the institution's trust funds will not be impaired by the execution of a judgment.[16]

Where the non-trust funds alleged consist of liability insurance, query whether it is proper to notify the jury that the "real" defendant is not a charitable institution, but an insurance company. The foundation for the jealously-guarded rule that notice of insurance may not be even hinted to a jury is that a jury would be prejudiced in its determination of fault, or into liberalizing its verdict. But where the defendant is a charitable institution, conceivably the natural sympathies of the jury may be the other way, a handicap which the plaintiff might cope with, were he permitted to mention to the jury what he is already permitted to plead in his complaint. The Supreme Court has not yet ruled on this precise point, although the issue has been carried to the Appellate Court in a number of cases. In the earlier cases upholding charitable immunity, the argument that the existence of insurance would prejudice a jury was recognized as one of the bases for granting the eleemosynary exemption.[17] In the *Wendt* case, the Appellate Court overcame the jury objection and denied immunity, on the ground "that the complaint in Illinois does not go to the jury room." [18]

While *Moore v. Moyle* brought Illinois abreast of the up-to-date and preferred view regarding charitable immunity, criticism has been made of the insurance modification of the doctrine. Prior to, and at the time *Moore v. Moyle* "settled" the law in this state, a number of insurance carriers who insured church and charitable organizations on low-cost premium policies, did so with the express reservation that the insurer could interpose a defense of immunity at its discretion, or in the case of certain types of claims which it elected not to cover.[19] Typically small institutions bargained for such low cost premiums for the limited protection afforded by such insurance. The holding, however, that given any insurance, the immunity defense is not available, has the effect of increasing insurance premiums to cover the enlarged liability, and thereby of increasing the insurance burden of charitable institutions desiring insurance. The same holding, moreover, has the consequence of setting aside the carrier's reserved right to plead the immunity defense, and in effect rewriting the insurance contract between the parties—an additional reason cited by some courts in refusing to impose liability on charitable defendants.[20] These objections, however, are countered with the argument that judicial decisions may always have the effect of changing the insurer's risk, and that this possibility is understood by the parties when they make an insurance contract.[21] Indeed, charitable institutions which enjoyed immunity under the *Parks* case, nevertheless increasingly purchased insurance as a protection against a possible reversal or alteration of the immunity doctrine.

Another objection to the insurance modification, that payment of insurance premium results in a diversion of trust funds, is answered by the observation that charitable institutions are not compelled to carry insurance, and if they do so, the decision is made by the trustees of the charitable organization, not by the court. "The immunity doctrine was devised for the benefit of the charitable corporation, and if the corporation wishes to waive immunity, we know of no principle in law which would prevent it from doing so." [22]

As predicted by the dissent in *Moore v. Moyle*,[23] the shift from "trust funds" to "non-trust funds" as a standard of liability has raised problems in the wake of that decision. Granting that insurance is non-trust fund, are there other non-trust funds of a charitable institution reachable by execution? Such question is important where the claim exceeds the insurance coverage, or where there may be no insurance coverage at all.

The possible answers range from the broad extreme that all funds of the charitable institution are "held in trust" for the general purposes of the organization, and are immune, to the narrow position that the only trust funds immune are those where the instrument of gift restricts the use to which the trustee may put the property. A too-broad construction of funds held in trust, as in the first view, ends in a too narrow area of liability, a result not in harmony with the intent of the *Moore* case to afford relief against charitable defendants. Thus, expressions in the case relative to "insurance . . . or . . . *other non-trust fund*" [24] indicate the court's recognition that the non-trust fund yardstick of liability does measure more than insurance.

The second position, although protected by trust law in other contexts,[25] is subject to the objection that although an institution may be the recipient of funds as an outright gift, without special conditions imposed

by the donor, yet the institution may invest and hold the funds for charitable purposes, just *as if it were* trust-held property. Indeed, charitable institutions probably prefer freedom and flexibility in their right to invest funds to achieve their general charitable purposes without the rigid "strings" attached to property given in trust. The charitable defendant would not, on that account, admit that all its assets, not strictly held in trust, are liable for tort claims. Where ultimately the Supreme Court will draw a line between these two extremes is at this time merely a matter of conjecture, except that it is certain the concept of "non-trust funds" embraces more than insurance.

A possible approach to the problem of demarcating non-trust funds has been suggested by reference to the tax statutes.[26] In Illinois, all property "exclusively" used for religious purposes [27] and "actually and exclusively" used for charitable purposes [28] is tax exempt. The exemption has been construed to cover a variety of uses, (some *quasi* commercial) [29] and property not *exclusively*, but only *primarily* and *substantially* used for religious, charitable or beneficent purposes has been held free from the assessor's scan. Held taxable, however, is property "leased or otherwise used with a view to profit," [30] even though rental income goes to support the institution. "The purpose to which the property is put, not the use of the income from that property," [31] determines taxability.

Although the tax criterion that property exempt from tax liability is also free from tort liability has the merit of simplicity and predictability, difficulties and disadvantages of such a test have also been enumerated: [32] The tax assessor may be liberal in classifying certain property as tax exempt, because "substantially" used for eleemosynary purposes, but which in the context of tort liability, may not be deserving of exemption. Conversely, property held in trust and immune from execution for tort liability may yet be taxable. Finally, legislative amendments or judicial decisions involving tax statutes for revenue reasons only should not operate to affect a change in the tort liability of eleemosynary institutions.

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[1] 218 Ill. 381.

[2] 218 Ill. 381, 384.

[3] Lenahan v. Ancilla Domini Sisters, 331 Ill. App. 27, 29; Vermillion v. Woman's College, 104 S. C. 197; Jensen v. Maine E & E Infrmy, 107 Me. 408. See Andrews v. YMCA, 226 Ia 374, 382.

[4] Lenahan v. Ancilla Domini Sisters, *supra*, p. 30; Ill. Law & Pract., Vol. 8, Ch. 3, § 49.

[5] 309 Ill. 147.

[6] Hogan v. Chicago Lying-in Hospital 335 Ill. 42; Lenahan v. Ancilla Domini Sisters, *supra;* Wattman v. St. Luke's Hospital Association; 314 Ill. App. 244; Moretick v. South Chicago Community Hospital, 297 Ill. App. 488.

[7] Lenahan v. Ancilla Domini Sisters, *supra;* cf dictum in Olander v. Johnson, 258 Ill. App. 89.

[8] 326 Ill. 400. See also Myers v. Y.M.C.A., 316 Ill. App. 400.

[9] 332 Ill. 618. Judge Friend speaking for the Court made a comprehensive survey and analysis of the decisions, including British, pertaining to the charitable immunity doctrine, and cited the variety of holdings ranging from absolute immunity through various qualifications to complete rejection of the doctrine. He cited the ironical fact that the American courts imported the rule on the basis of a dictum of Lord Cottenham in two English cases, subsequently reversed by the English courts, but accepted by the American courts in ignorance of the reversal.

[10] 405 Ill. 555.

[11] A *per curiam* decision announced Sept. 22, 1949, not reported. 38 Ill. Bar J. 187.

[12] "Is the state so deeply interested in fostering charities and maintaining the integrity of their funds that it will occasionally compel isolated individuals to bear pain and suffering and property loss without recompense in order that the good of the greater number shall be enhanced? Is tort immunity still another of the many special privileges which charities are to receive from the courts and Legislatures?" Bogert, Trusts and Trustees, Vol. 2, ch. 20, § 401, pp. 1243-1244.

[13] "If this question were one of first impression we should be inclined to hold with Georgetown College v. Hughes [130 F (2d) 810] that continued protection of charitable corporations from tort liability is justified by neither theory nor public policy. . . . We think (the) argument for sustaining immunity because of the intent of the donor and the danger of destroying or preventing the creation of charitable institutions no longer has, if ever it had, compelling effect." Wendt v. Servite Fathers, *supra* pp. 629, 631. See Moore v. Moyle, *supra*, p. 563.

[14] 405 Ill. 555, 564.

[15] It would seem unfair to require the plaintiff to allege and prove existence of non-trust funds, in view of the familiar rule that the burden of proof shall be carried by the party having superior knowledge of the facts.

[16] In a pending case in the Circuit Court of Cook County, Judge Fisher denied a motion of the defendant to strike a reference in the plaintiff's pleadings to the existence of insurance. Defendant offered, in its motion, to interpose no eleemosynary defense of immunity, and cited that on such offering, the reference to insurance was irrelevant and prejudicial. Notwithstanding the voluntary estoppel on the immunity point, Judge Fisher denied the defendant's motion on the authority of Moore v. Moyle, and observed that the plaintiff had the right to place on the record, even at the pleading stage, the alleged existence of non-trust funds. Hoffman v. Congregation Beth Itzchok, 55 C 17362.

[17] Myers v. Y.M.C.A., 316 Ill. App. 117; Piper v. Epstein, 326 Ill. App. 400.

[18] 332 Ill. App. 618, 633.

[19] It is the policy of the Catholic Bishop of Chicago to stipulate with insurance companies, when defending local Catholic charities, not to interpose the defense of immunity. (See Kos v. Catholic Bishop of Chicago, 317 Ill. App. 248, where immunity would have been a valid defense, but was not invoked.) Wendt v. Servite Fathers, 332 Ill. App. 618. For an excellent discussion regarding the problems of insurance in charitable immunity, see Vol. 2, Chap. 79, Trying and Preparing a Case in Illinois, Ill. State Bar Assn., by the late George C. Bunge.

[20] "To hold that defendant's liability was increased by the mere existence of the insurance policy would, in effect, be writing a different contract of insurance than that entered into between the parties." Stedem v. Jewish Memorial Hospital Assn., 239 Mo. App. 38, 43.

[21] ". . . it does seem anomalous that a defense provided for in an insurance contract is lost merely because the contract was made." Bunge, *supra*, p. 323.

[22] Wendt v. Servite Fathers, *supra*, p. 634.

[23] ". . . disputes will arise, not only as to the character of particular assets, but as to the specific amount of non-trust funds necessary to suspend or abate immunity —questions which must be resolved before the actual amount of the judgment is known." 405 Ill., 555, 567.

[24] 405 Ill. 555, 560.

[25] See 45 Ill. Law Rev., 777, 781.

[26] McLeod v. St. Thomas Hospital, 170 Tenn. 423.

[27] Ill. Rev. Stat., Ch. 120, Sec. 500 (2). See People v. Muldoon, 306 Ill. 234 where a monastery of Catholic nuns devoted to lives of prayer, worship, etc. was held not exempt from taxation as a "place used for religious purposes," on the ground that the primary use of the monastery was that of a residence.

[28] Ill. Rev. Stat., Ch. 120, Sec. 500 (7).

[29] People v. U. of Ill., 388 Ill. 363, where certain property, including profit-making bowling alleys donated to the University, were held exempt.

[30] Ill. Rev. Stat., Ch. 120, 500 (2) and (7). See cases cited in 45 Ill. Law Rev., *supra*, p. 781.

[31] 45 Ill. Law Rev., *supra*.

[32] 45 Ill. Law Rev., *supra*.

Love-Making

The Lawyer's Way

REBECCA MORROW REAVES

Now Jennie, dear, I think you will agree
'Tis time that we investigate this matter
Of so much interest unto you and me,
But doubly so is it unto the latter;
For, since my love, when I first my suit began
I've acted with this rigid resolution—
Whereas, that I, a single, lone young man,
And you a lady of sound constitution
In Cupid's court a love case instituted,
It should this term be fully prosecuted.

Said case is one that may not bear the test
Of long postponement, so e'er we adjourn,
Accept my terms, my love, and say 'tis best
To let proceedings take a legal turn.
On the hypothesis that you'll agree
To said requirements of said proposition,
The Court declares immediate action be
Taken to secure a valid recognition
Of all good faith between us, so unfearing
Rise, kiss th—I mean *me*, love, without swearing.

From *The Lawyer's Alcove*

LECTURE BY HARRY G. FINS

Member of our Board of Managers Harry G. Fins, authority on Illinois and Federal procedure, addressed the Decalogue Society Legal Education Forum recently at the Covenant Club, on "Revised Illinois Civil Practice Act and Supreme Court Rules." Aware of the limitations of speaking time, Fins announced that there will be available to each of the members present a complimentary copy of a 45-page summary of the subject, covering more than 100 changes in Illinois procedure. Fins' office is at 77 West Washington Street.

The speaker "pin pointed" as many high spots as time would allow. He placed foremost among the important amendments Section 17, but raised the strong possibility of "constitutional" attack on the amendment. He also discussed the change in return day method, emphasizing new discovery and deposition procedure, and noted that the lawyer will, now, for the first time, have third part pleadings in the Circuit and Superior Courts in Cook County. Fins was appreciative of the advantages of a broader summary judgment and motions under Section 48, and the abolition of coram nobis and bill of review. He also directed attention to the shortening of the appeal time and the enlargement of the availability of interlocutory appeals.

Maynard Wishner is chairman of the Decalogue Society of Lawyers Legal Education Committee..

The DECLARATION of INDEPENDENCE

On Friday, December 16, at a luncheon in the Covenant Club, the Decalogue Forum Committee held a meeting participated in by a panel of several members on the philosophical, political, and theological aspects of the Declaration of Independence. Oscar M. Nudelman and Alec E. Weinrob, leaders of The Decalogue Great Books course, directed the discussion.

Solomon Jesmer is chairman of The Decalogue Forum Committee, which arranged this meeting.

CONGRATULATIONS!

Member Samuel L. Seltzer, formerly head of the Trust Department of the Central National Bank, has been elected president of the recently opened Consumers National Bank at 3158 Roosevelt Road, Chicago.

THE DECALOGUE STORY

At a recent celebration of its twenty-first birthday, The Decalogue Society of Lawyers noted with pride its growth in size from an initial number of two hundred in 1934, to a present membership of more than fifteen hundred. The occasion of the anniversary suggests another opportunity to tell our Society's program, plans, and achievements.

The Decalogue Society of Lawyers strives to contribute to the professional life of its members. Aware of the responsibilities of American citizenship, the Society opposes all laws which would deny to the citizen the rights guaranteed to him under our Constitution and the Bill of Rights. Similarly, the Society actively works for enlightened legislation to improve the standards of life and living for all peoples in our country. And, as a Bar Association of Jewish lawyers and judges, it deems it as its special obligation to oppose encroachments upon the rights of Jewry and all other minorities to enjoy the full benefit of our country's laws and institutions.

The Decalogue Society of Lawyers regards with deepest sympathy the tremendous efforts of Israel to maintain itself in the family of nations as a free and democratic state. It has, since the founding of this new republic, expressed its interest in the destiny of Israel both in material substance and in moral support.

The Society recognizes distinguished service to the principles and traditions of our government. Men conspicuous for their achievements in the professional, social, economic, and religious life of the United States, Jews and non-Jews, have been recipients of the Society's Annual Award of Merit.

The Society conducts an educational program of seminars, studies of developments in the law, and there are periodic lectures on recent court decisions on both the State and Federal level. It publishes a bi-monthly Journal of news concerning its membership and authoritative articles of pertinent social and professional interest.

Non-partisan in local, state, and national politics, The Decalogue Society nevertheless strives, on an individual basis, for the election to the Bench of men and women best qualified to serve the interests of the profession and the ends of justice.

A Decalogue Forum on timely themes of general, professional, or particularly Jewish interest is a regular feature of Decalogue Society activities. More than twenty committees devoted to the interests of the legal profession, to communal problems, and to general civic interests are functioning in our Society.

Each member receives, annually, free, an Appointment and Directory Book which has, throughout the years, proved of great daily service to the practicing lawyer.

In addition to many other activities, members may avail themselves of the facilities of our law library, located in the headquarters of the Society. Members in need of employment are served by the Society's Placement Committee; it has particularly helped a large number of younger men in search of desirable positions in law offices.

The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 82 West Washington Street, Chicago 2, Illinois.

. . . THE DECALOGUE JOURNAL HAS BEEN AN ELOQUENT AND ARTICULATE MEDIUM IN ALERTING THE PROFESSION TO INROADS UPON THE RIGHTS OF THE INDIVIDUAL . . .

—THOMAS C. CLARK, *Associate Justice of the United States Supreme Court*

Summary of Recent Decisions in Illinois Probate Law

By NAT M. KAHN

Member Nat M. Kahn is a member of the Board of Governors of the Illinois State Bar Association and a frequent writer and lecturer on probate law.

Two landmark decisions were decided this past year by the Supreme Court of Illinois. One was *In Re Estate of Schneider, (Link v. Ralston,)* 6 Ill. 2d 180, 127 N. E. 2d 445. In that case the Supreme Court affirmed the Appellate Court decision in the same case reported in 2 Ill. App. 2d 560, 120 N. E. 2d 353.

The Supreme Court in this case held flatly for the first time that parol evidence is admissible to prove that the survivor of a joint bank account was not intended to own the funds of the deceased depositor.

The second case is *Farkas v. Williams,* 5 Ill. 2d 417, 125 N. E. 2d 600. In that case the settlor of an inter vivos trust retained practically every vestige of control of the property, but since the settlor of an irrevocable trust always has the power to revoke the trust, a trust agreement which gives the settlor all of the added powers of all control and management is a valid substitute for a will.

An interesting adoption case was decided by the Appellate Court for the First District of Illinois, *In Re Estate of Leichtenberg,* 5 Ill. App. 336, 125 N. E. 2d 277. In that case a child was re-adopted by his natural parents, and the Appellate Court held that the child was not entitled to inherit from one of his first adoptive parents who died after the re-adoption of the child by his natural parents. This is a novel and unusual case. The Supreme Court of Illinois allowed a petition for leave to appeal in this case.

Supreme Court of Illinois Decisions

In re Estate of Edwards, 3 Ill. 2d 116, 120 N.E. 2d 10. A joint will of a husband and wife with reciprocal provisions is presumed to be executed pursuant to a contract and therefore irrevocable upon the death of one of the testators. Testimony that the deceased wife owned no property at the time of her death is properly excluded in a hearing to admit the wife's will to probate, as the surviving husband derived benefit from the consideration given by the deceased wife to bind the agreement. On appeal to the Circuit Court from an order of the Probate Court allowing or denying probate of a will, the contestant is still limited as to the execution of the will and testamentary capacity of the testator to the testimony of the subscribing witnesses.

Billerbeck v. Collins, 3 Ill. 2d 142, 120 N.E. 2d 32. An executor's power of sale includes the right to grant an easement of a common stairway where it was of such a character as to be appurtenant to the building sold, and where a sale without the easement would be impracticable.

People v. Northern Trust Co., 3 Ill. 2d 285, 120 N.E. 2d 543. Although an aunt made many generous gifts to her nephew and had a great affection for him, a finding that the deceased aunt stood in the acknowledged relation of a parent to her nephew within the provisions of the Inheritance Tax Act is not warranted where the nephew never regarded his aunt as his mother, but always spoke of her as his aunt, and his own mother gave him full and complete parental care until after he was more than fifteen years of age, and objected to his adoption by the decedent, the mother stating that she wished to retain him as her son.

Platz v. Walk, 3 Ill. 2d 313, 121 N.E. 2d 483. A joint and mutual will of a husband and wife had an unusual provision that the survivor would be the absolute owner of the first decedent's property and could dispose of the property by his or her subsequent will or codicil. Because of this provision it was proper for the surviving wife to dispose of her deceased husband's property by her later will and give the property to persons other than those persons named as beneficiaries under the original joint will.

Shamel v. Shamel, 3 Ill. 2d 425, 121 N.E. 2d 819. A court of equity has the power under Section 50 of the Chancery Act to order a deviation from the provisions of a trust instrument and permit a sale of coal and minerals under the surface of the land as the basic purpose of the trust was to preserve the full income and benefit for the beneficiaries under the trust, and the agricultural use of the surface of the land was not affected by the severance of the coal and mineral rights.

In re Estate of Kent, 4 Ill. 2d 81, 122 N.E. 2d 229. Both under the common law and Section 8 of the Evidence Act a husband or wife is an incompetent witness to the other's will. A purported codicil was witnessed by the testator's wife and one other person, and since it was void it did not revive the husband's will which had been revoked by a subsequent marriage of the testator.

Galapeaux v. Orviller, 4 Ill. 2d 442, 123 N.E. 2d 321. Mere expressions of an intention to devise property by

will which do not culminate in an oral agreement with definite and unequivocal terms with mutual obligations do not constitute a contract.

Stites v. Gray, 4 Ill. 2d 510, 123 N.E. 2d 483. The words "heirs" or "heirs at law" when used in a devise of real estate without any other qualifying language are ordinarily construed in their popular, colloquial and common law meaning and refer only to the testator's next of kin by blood and do not include his widow.

Williams v. Fulton, 4 Ill. 2d 524, 123 N.E. 2d 495. The synonomous phrases "next of kin" or "nearest of kin" when used in a devise of real estate without any other qualifying language mean nearest blood relatives and do not include widows. However, a devise of a remainder to the "nearest of kin according to the rules of descent as declared by the statute" means those persons who would take under the Descent Act and includes widows.

(These last two cases, *Stites v. Gray* and *Williams v. Fulton*, warn against the use of language in wills such as "heirs," "heirs at law," "next of kin" and "nearest of kin" unless they are qualified by specific language as to the testator's intention relative to surviving spouses.)

McDonough County Orphanage v. Burnhart, 5 Ill. 2d 230, 125 N.E. 2d 625. This case demonstrates a liberal and logical application of the *Cy Pres* doctrine. Under the 1943 General Not for Profit Corporation Act, a vested gift to a charitable organization is not divested by its subsequent dissolution, and the property no longer reverts to the donor or testator or his heirs, unless specific provision is made for such reversion.

The Salvation Army was awarded the property originally intended for the dissolved orphanage as being the organization most similar to the orphanage.

Farkas v. Williams, 5 Ill. 2d 417; 125 N.E. 2d 600. A revocable inter vivos trust is a valid substitute for a will, even though the settlor retains a life interest, controls the trustee, or even acts as trustee. This does not give a settlor any more power over the trust property than he already has by virtue of his power to revoke the trust. Since the retention of the power to revoke is permissible, the retention of the right to act as trustee or to control the trustee must also be permissible.

Burrows v. Palmer, 5 Ill. 2d 434, 125 N.E. 2d 484. A contingent remainder beneficiary under a will is entitled to maintain a suit to protect the trust property.

Link, Executor v. Ralston, Est. of Schneider, Docket 33346, 127 N.E. 2d 445. Parol evidence is admissible to prove that the survivor of a joint bank account was not intended to own the funds of the deceased depositor.

Appellate Court of Illinois Decisions

Northern Trust Co. v. House, 3 Ill. App. 2d 10, 120 N.E. 2d 234 (1st Dist.). A power of appointment may be exercised by implication. However, where a will is silent as to any intention to exercise a power of appointment, and no evidence is introduced to show any facts, circumstances or intention on the part of the testator to specifically exercise the power, an effective appointment is not made. In general, a residuary clause is not effective to exercise a power of appointment. (Petition for leave to appeal denied).

Slape v. Fortner, 3 Ill. App. 2d 339, 122 N.E. 2d 57 (4th Dist.) A witness who has no direct pecuniary interest in the suit, who is married to a sister of one of the parties to an action adverse to an executor, and who in the past acted as legal adviser for some of the direct parties in interest adverse to the executor, is not disqualified to testify because of the dead man's statute. The lawyer's interest in the financial success of his clients is not the certain, direct and immediate interest that bars him as a witness under the dead man's statute.

Smith v. Rekeweg, 3 Ill. App. 2d 350, 122 N.E. 2d 71 (3d Dist.) When a bequest is made to a named individual and to others who are described as a class (and not named individually), the named individual takes one-half of the bequest, and the remaining one-half of the bequest goes to the group described as a class. (Petition for leave to appeal denied.)

In re Estate of Wilson, 3 Ill. App. 371 2d, 122 N.E. 2d 282 (1st Dist.) A plaintiff who has a suit pending against an administrator for personal injuries is an "aggrieved person" under Section 330 of the Probate Act, and he has a right of appeal from an order of the Probate Court allowing a claim of another person against the decedent's estate.

In re Estate of Ostrowski, 3 Ill. App. 2d 431, 122 N.E. 2d 596. A document properly signed and witnessed that states "All of my property belong to" (a named person) "altogether with Lot land" was testamentary in character on its face, and upon proof of its due execution and attestation it was entitled to be admitted to probate as a will.

In re Estate of Ginsberg, 4 Ill. App. 2d 138, 123 N.E. 2d 739. (2d Dist.) Where the tax clause in a will provided that all death taxes should be paid by the respective beneficiaries, but was silent as to income taxes, and the will gave one-half of the estate to a named individual and the other half to a tax exempt non-profit corporation, income taxes on income received after the testator's death was an administration expense and not a death duty under the terms of the will, and was charged equally against the shares of the two beneficiaries.

In re Estate of Waggoner, 5 Ill. App. 2d 130, 125 N.E. 2d 154. (3d Dist.) Where certificate representing shares of bank stock had been delivered by owner to bank cashier and transfer agent, who was authorized in writing to transfer the stock on books of land to owner's sister, who was cashier's wife, after which the certificate was placed in cashier's safety box and was never possessed by the sister, and the owner continued to receive dividends and vote the stock at stockholder's meeting, the certificate was not shown by clear, convincing and satisfactory evidence to have been delivered to cashier as agent or trustee for the sister. The stock represented thereby constituted assets of the owner's estate after his death, rather than the subject

of a gift inter vivos to the sister. (Petition for leave to appeal denied).

In re Estate of Carlin, 5 Ill. App. 2d 241, 125 N.E. 2d 649. Under agreements providing for transfer of bank accounts to the name of transferor's nurse to facilitate withdrawals for transferor's nursing, maintenance and funeral expenses, and providing that the nurse should receive money after transferor's death, no ownership was vested in the nurse after death of transferor since the gift contemplated failed because not to take effect until transferor's death and the agreements were ineffective as testamentary acts because not executed in conformity with statutes regulating making of wills.

Smallwood v. Soutter, 5 Ill. App. 2d 303, 125 N.E. 2d 679 (1st Dist.) An order appointing a trustee under a will pursuant to the report of an attorney appointed by the court was invalid where the report was based on the ex parte investigations and interviews of the attorney. A reference to a special or other assistant to a court in a chancery proceeding is void unless authorized by statute. Courts do not have the power to delegate any of their duties unless clearly authorized by law. (Petition for leave to appeal denied).

In re Estate of Leichtenberg, 5 Ill. App. 2d 336, 125 N.E. 2d 277. Where a child was readopted by his natural parents with the consent of others who had previously adopted such child, and the order of adoption provided that the child should be fully restored to his natural parents as though no prior adoption had been made, the child was not entitled to inherit from one of the first adoptive parents who died after the readoption of the child by his natural parents. (Petition for leave to appeal allowed).

In re Will of Rutledge, 5 Ill. App. 2d 355, 122 N.E. 2d 683 (3d Dist.) In a hearing on the admission of a will to probate, an attesting witness in response to a question whether he believed the testator to be competent answered, "His appearance was O.K. to me." In response to a question, "Do you have an opinion as to whether he was competent to make a will?" the witness answered, "That never entered my mind." These answers were held to be sufficient as to the belief of the attesting witness that the testator was of sound mind when he executed the will. "An attesting witness may be permitted to express an opinion as to the mental condition of the testator at the time the subscribing witness signed, without laying any foundation therefor." (See *Brownlie v. Brownlie*, 357 Ill. 117, 123).

Davis v. Cohen, 5 Ill. App. 2d 517, 126 N.E. 2d 401 (1st Dist.) Where a will was discovered after the entry of a partition decree, and proper diligence was shown in discovering the will, the granting of a bill of review setting aside the partition decree was proper.

Rathbun v. Rimmerman, 6 Ill. App. 2d 101, 126 N.E. 2d 856 (2nd Dist.) A first cousin of an incompetent person has a superior right over the public administrator to be appointed as conservator of the estate of an incompetent person, and a cousin or any next of kin of the incompetent is a "party aggrieved" under Section

(Continued on page 20)

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Learning is an ornament in prosperity, a refuge in adversity, and a provision in old age. —ARISTOTLE

NEW BOOKS

Adams, Walter and Gray, H. M. *Monopoly in America: the government as promoter.* N. Y., Macmillan, 1955. 236 p. $3.50. (College ed. $2.75)

Beisel, A. R., Jr. *Control over illegal enforcement of the criminal law; role of the Supreme Court.* Boston, Boston Univ. Press, 1955. 112 p. $2.75. (Gaspar G. Bacon lectures)

Callaghan's Illinois digest. 3d ed. Chicago, Callaghan, 1955. v. 1-3. $17.50 per vol. (To be complete in about 40 vols.)

Commerce Clearing House. *Dictionary of income tax terms.* Chicago, CCH, 1955. 48 p. (Current law handybook ed.)

Cookenboo, Leslie, Jr. *Crude oil pipe lines and competition in the oil industry.* Cambridge, Harvard Univ. Press, 1955. 117 p. $4.00.

Corbett, P. E. *Study of international law.* N. Y., Doubleday, 1955. 55 p. $0.85.

Finney, H. A. & Oldberg, Richard. *Lawyer's guide to accounting.* N. Y., Prentice-Hall, 1955. 291 p. $7.65. (Text ed., $5.75)

Hodge, J. H., ed. *Famous trials;* 5th ser. Baltimore, Penguin Books, 1955. 223 p. $0.65. (Paper)

Lustgarten, E. M. *The woman in the case.* N. Y., Scribner, 1955. 218 p. $3.00.

Mason, A. T. *Security through freedom: American political thought and practice.* Ithaca, Cornell Univ. Press, 1955. 232 p. $2.90.

Newman, E. S., ed. *Freedom reader.* N. Y., Oceana, 1955. 288 p. $3.50. (Paper $1.00)

Pringle, Patrick. *Hue and cry; the story of Henry and John Fielding and their Bow Street runners.* N. Y., Morrow, 1955. 230 p. $4.00.

Rutland, R. A. *The birth of the Bill of Rights:* 1776-1791. Chapel Hill, Univ. of North Carolina Press, 1955. 243 p. $5.00.

Sternitzky, J. L. *Forgery and fictitious checks.* Springfield, Ill., Thomas, 1955. 101 p. $4.75.

Wallace, Robert. *Life and limb; an account of the career of Melvin M. Belli, personal-injury lawyer.* Garden City, N. Y., Doubleday, 1955. 250 p. $3.50.

Werbin, I. V. *Legal cases for contractors, architects, and engineers.* N. Y., McGraw, 1955. 487 p. $6.00.

Wilton, G. W. *Fingerprints: fifty years of injustice.* Galashiels, A. Walker & Sons, 1955. 16 p. 2s.

JAY SCHILLER, CANDIDATE

Member Jay Schiller, former assistant state's attorney, is candidate for State Senator, Fourth Senatorial District, which is in Evanston, Illinois.

Augustine Bowe on Civil Rights

Excerpts from an address by Mr. Bowe, President of The Chicago Bar Association, delivered under the auspices of The Decalogue Forum Committee before a large audience of members and their friends at a luncheon in the Covenant Club on October 28, 1955.

The topic for discussion today is particularly appropriate here because in my long association with many of you, both as individuals and in groups, I have never found people who took so seriously the important relationships between minorities and majorities in so far as their public and private rights are concerned as The Decalogue Society, its friends and members.

. . . It is possible to take a flamboyant attitude about the history of civil rights and the protection of minorities in view of the situation in which we now live. If we talk of a degeneration from some golden age of the past, we do ourselves an injustice, and impair our usefulness. I think it may be safely said that the conception which most of us here entertain is something we have not inherited, but something that is in the making.

I know that it is customary on religious occasions to point with pride to the great religious tradition in favor of civil rights. If it is a patriotic meeting, it is nice to point to the Magna Carta, to the Declaration of Independence, and to the Constitution, and say that our present notions of civil rights of minorities stem from those documents. But, that isn't true.

However, it is true that in the beliefs that are inherent in the great religions of mankind and in our political documents we do find the germs, of our conceptions of the way people must live together in order to survive, especially in this generation.

. . . It will help us to understand the nature of our task if we realize that we are not trying to resuscitate something that existed anywhere in the history of the human race. We are trying to give the human race a new history, to use these ancient traditions, to modify them so that no longer will it be possible for great spiritual writers such as St. Augustine and Aquinas to ignore the fact of slavery, to ignore the social evils connected with serfdom, or for Greek philosophers to sit in their porticos and discuss great matters while their existence rests upon the thousands of slaves about them.

What we are trying to do is take these fine thoughts and to make them real, and to live by them, which is a mighty hard thing to do.

It was a difficult thing first accomplished by people who are known principally for their commercial instincts,—the British people. Their Navy stopped the slave ships from Africa and by decree they first stopped slavery—a generation before our bloody war to end slavery—in all of their dominions; so, we don't wish to get too great an idea of where we stand in this whole picture.

I think we are firmly committed to a right and a decent appraisal of what should be done regarding minorities, but I wish to emphasize this, that those of us who have this notion are in a minority.

. . . The great weapon that is being used by those who oppose decent housing, fair employment practices, de-segregation of schools, is the majority vote. When they tried to block desegregated public housing in Illinois, they didn't say, "No, we shan't have desegregated housing," but, "It will be subject to a referendum, and that referendum will include the area of a mile, say, around where the proposed housing is to be." And they knew a big majority of those people would oppose it.

I don't know how a Fair Employment Practice Act would fare at the polls. Forty million people in the United States live under such a law now, and there has been no effort to repeal it. But our legislature has definitely refused to pass it on at least two or three occasions, and it might well be that a vote of the entire population would be definitely against it.

On the question of the desegregation of the schools that our Supreme Court has acted upon recently, or upon the elimination of the restrictive covenant, I think too the position which most of us take on those subjects is a minority position. In other words, it does no

good for people to adopt a high position to improve conditions between races, between religious groups, unless they realize that they must fight for it.

. . . I think one of the worst things that is taking place is something the law cannot do much about; whenever you get an appreciable number of negroes in a given area, white people walk out. That is accomplishing one of the most dangerous things that could happen to this community.

Tom Wright used to say that by 1960 or 1965 the entire area from 79th Street to Devon Avenue and from the lake, except the possible residential fringe along the lake, west to Kedzie Avenue, would be a negro community; that the heart of Chicago would be a negro community.

. . . The only way that can possibly be prevented is to break it up. You can't do it by law, but by means of changing mental habits, the tendency of people to move away when the non-white groups get into their neighborhood.

There are nineteen or twenty communities in Chicago that have given serious thought to the possibility of integration. This means a very definite watchfulness on the part of people in every block. The city couldn't hire enough people, for instance, to report all the illegal conversions that are bound to take place. It depends on a policing of the people by themselves.

We recently published over at the Commission on Human Relations a 60-page document on Trumbull Park. It isn't argumentative. It just states the facts; of the mistakes that were made and the good things that were done; and its purpose was to prepare a document that would be useful in all the Trumbull Parks that are apt to happen throughout this country due to the desegregation movement.

Now, there has been no loss of life in Trumbull Park, but again you face a very unreal refusal to face the facts of life. As a person who has observed that trouble from the beginning, I am annoyed to hear the flippant and impatient, often times angry, statement made, "Why has this thing been allowed to continue for two years?" You hear that on every hand, from people that don't know what is going on. We have a social cancer out there in Trumbull Park. We are treating it as best we can by a liberal dose of law and order. A million signatures were presented to Mayor Kennelly to take the police out of there because of crime in the other parts of the city, and let the people there handle their own affairs. Mayor Kennelly, and Mayor Daley after him, have refused to give in.

Instead of one negro family in Trumbull Park, there are thirty families at the present time, and the city has refused to give in to mob violence. They could have ended the whole business in twenty-four hours if they wanted it to be another Cicero, and to allow Chicago to become disgraced in that light all over the world.

Now, I know all those arguments. I have heard them all: "It's easy for you people on the North Side, or you people in the suburbs, to preach about this, but you don't have to live with these people." Well, I am not pulling my punches on what the facts are. I think every immigrant group came to this country with certain objectionable features. I know that mine did. And I think, probably, if you look back, you can see a great many objectionable features about your own people when they came here. It is true, there's no doubt that negroes, as well as white people, coming from a backward part of the Southland have brought with them many habits that don't make them the very best of neighbors.

However, the situation is not as acute as it might seem because, generally speaking, the negroes who are trying to get into neighborhoods where white people live are not as a rule the first generation from the South. They are people like Dr. Percy Julian and Judge Green, who any one of you would be glad to have as next door neighbor. Those are the ones that the people around Trumbull Park and in areas of that sort are holding their noses at.

I think too that out of these frictions that are taking place, provided they are discouraged, an understanding comes. For instance right here in Chicago, a negro couldn't walk into Henrici's or the Sherman House ten, fifteen years ago and get a meal; he couldn't get a hotel room. He can do it now, and the community has accepted those things.

So, as I say, our big thing is to realize first, that we can't depend too much on laws and, secondly, that we are not reviving something that existed in the far distant past. We are doing something without tradition. We are trying to make society here homogeneous out of elements that have for long generations had hostilities of a racial and religious order, and we are having them learn to compose those differences and to go forward with the common ideas of a new people in a new age.

. . . When you get very close to any of these problems, you find that if you are really sincere in your purpose of creating a just society, not in accordance with some old political document, or with any ritual but as befits the idea of decency as it exists today we have a right to feel that we are attacking this thing with courage; and although we are a minority, we are a hard hitting minority.

Summary of Recent Decisions

(Continued from page 17)

330 of the Probate Act with a right of appeal from the Probate Court to the Circuit Court from the order appointing the conservator. (Petition for leave to appeal denied).

Yung v. Peloquin, 6 Ill. App. 2d 258, 127 N.E. 2d 252 (1st Dist.) In a will construction suit, the plaintiff has the right to prove by parol evidence that the scrivener of a will was instructed to insert the plaintiff's name as sole beneficiary, and that the scrivener instead fraudulently inserted his, the scrivener's own name, as the sole beneficiary.

Federal Court Decisions

United States v. New, 217 Fed. 2d 166 (U. S. Court of Appeals, 7th Circuit). The widow beneficiary of an insolvent deceased insured is not liable for his income taxes as a "transferee." In no sense are the insurance proceeds ever the property of the decedent taxpayer. Since at his death the policy was not payable to his estate, the proceeds of the policies never passed to his estate, and as to the proceeds the beneficiary did not take them as a legatee or distributee of his estate.

Carius v. New York Life Insurance Co., 124 F. Supp. 388 (U. S. Dist. Ct. Southern Dist. of Illinois, Northern Division). Korean hostilities held to constitute "war," and payment of double indemnity for accidental death under a life insurance policy provided death did not result from "war or any act incident thereto" was denied.

BOOK REVIEWS

Handbook of Oil and Gas, by Robert E. Sullivan. University of Notre Dame. 536 pp. $11.35.

Reviewed by SAMUEL BERKE

Master in Chancery, Superior Court, Cook County

Until about ten years ago, I had the impression that petroleum was found in underground pools or lakes; the author aware of this general impression begins his book with the following sentence: "Petroleum is not found in underground pools or lakes." This statement will probably surprise many who read it, laymen and lawyers alike. Generally speaking, oil is found only in association with sedimentary rock structures. Certain rocks, such as sandstones and limestones, are favorable to the accumulation of oil because they can hold oil in the spaces between the sand grains or in the tiny holes in the limestones. Petroleum is incapable of self-propulsion but is ejected from its natural habitat by the extraneous force of gas expansion or water encroachment. During the past two decades, the petroleum industry has made greater strides than almost any other field of our economy. Old law had to be interpreted in the light of this great advance and much new law had to be written. Many oil companies developed tremendous income and reserves and several have entered the exclusive circle of billion dollar corporations during this period. Congress recognized the great hazards to capital in search of oil and gas and provided important special tax deduction provisions. Within these provisions, keen minds developed avenues for tax deduction which even Congress hardly contemplated, hence, considerable law has been written by our courts on the subject. In spite of the many decisions, much law affecting petroleum has been in a state of flux. The Supreme Court of the United States has rendered many decisions in the past decade which were sorely needed in order to settle important differences. For example, the fact that States taxes are imposed on production and that oil when produced moves in interstate commerce does not vitiate the levy—Cumberland Pipeline Co. vs. Kentucky State Tax Comm. 228 Ky. 453. However, where the question of interstate commerce is involved, it is a close question to determine whether or not there is, in fact, obstruction of such movement, and in Michigan—Wisconsin Pipeline Co. vs. Calvert 347 U. S. 157—the Supreme Court as recently as 1954 analyzed the problem as follows: "The recurring problem is to resolve a conflict between the Constitution's mandate that trade between the States be permitted to flow freely without unnecessary

obstruction from any source, and the States' rightful desire to require that interstate business bear its proper share of the costs of local government in return for benefits received—a tax imposed on a local activity related to interstate commerce is valid if, and only if, the local activity is not such an integral part of the interstate process, the flow of commerce, that it cannot realistically be separated from it . . ." citing Memphis Natural Gas Co. vs. Stone 335 U. S. 80.

The author has covered nearly every subject of oil and gas law in brief, clear and concise style. He very properly assumes that the reader is totally unfamiliar with the subject and undertakes an explanation at the outset which, if the reader can retain, will help him to understand the mass of material that follows. The book is divided into seven parts.

Part I, after acquainting the reader with petroleum's geological story, refers mainly to the nature and substance of the landowner's interest. There are innumerable situations covered which trace down the law of oil and gas to the present. For example, a two-page reference to the "rule of capture" which was first enunciated in the case of Westmoreland vs. De Witt 130 Pa. St. 235. This stems from analogy that courts drew between oil and underground waters, as stated in the English case of Acton vs. Blundell in 1843. The ruling involved was more specifically stated in 1948 by the Supreme Court of Texas in Elliff vs. Texon Drilling Company as - - - the owner of a tract of land acquires title to the oil and gas which he produces from the wells on his land, though part of the oil and gas may have migrated from the adjoining land.

Professor Sullivan devotes considerably more space to the next chapter: "The Oil and Gas Lease: Creation, Interpretation and Termination." Few owners of land, indeed, ever drill their own wells. Nearly 100 per cent of all wells are drilled by lessees; hence, the oil and gas lease is of primary importance. The author properly recognizes the proximity of leasing to drilling, marketing and developing, which together with taxes are responsible for most of the law applicable to petroleum.

Part III substantially covers assignments of various interests of ownership by lessors and lessees.

Part IV, which deals with governmental regulation or conservation, amply explains the many problems which are covered by various state and Federal regulations. Most States have adopted legislation for control of production. These are strictly enforced and provide for severe penalties in cases of violation. Illinois is still among the States which do not regulate the amount of production.

Part V covers the subject of transportation and Federal and State regulations for rates and services.

Have you ever heard of ad valorem taxes or of production and severance taxes? These together with income taxes, miscellaneous Federal taxes, depreciation and depletion are covered in Part VI.

The final 25 pages of the book constitute Part VII and deal with problems incident to the commencement and the financing of the oil operation.

I have in my library many volumes on oil and gas law. One set, for example, consists of some 8 or 9 volumes and is hardly more useful to the lawyer than this handbook, which contains about all a lawyer might need to refer to. The table of contents is arranged well and the index is ample and clear. The appendices contain many legal forms which a lawyer could use, such as leases, deeds, contracts, et cetera. I could sum it up by telling you that I shall make Handbook of Oil and Gas Law an indispensable part of my own library.

Citizen's Guide to Desegregation, by Herbert Hill and Jack Greenberg. Beacon Press. 185 pp. $1.00.

Reviewed by BERNARD WEISSBOURD

The authors have attempted to present a survey of the social and political background of the Negro people since Reconstruction, and a record of its legal status until the 1955 decree of the United States Supreme Court in the school segregation cases. In addition, the authors have summarized experiences in desegregation of public schools in the United States to the date of publication, have presented a question and answer section on the meaning of the late decisions of the United States Supreme Court in this area, and have written a chapter discussing what citizens can do to help bring about an orderly and peaceful transition. The book is, therefore, a collection of interesting material. Unfortunately, the authors each prepared separate sections, with the result that the whole is less than the sum of its parts.

The juridical history and legal analysis were written by Jack Greenberg. These sections also contain the story of the legal campaign which was initiated by the National Association for the Advancement of Colored People in the early 1930's and which culminated in the holding that segregation in the public schools is unconstitutional. This material is of special interest to lawyers and is, on the whole, well presented.

A knowledge of the social and political history of the Negro people is essential to an understanding of the legal history. The sections dealing with these subjects, however, are some-

what sketchy. The time elapsed since the desegregation decrees is too short to permit long term conclusions, while the material dealing with the history of the Negro people since Reconstruction covers a period too long for summary treatment.

Though not an integrated analysis of the legal and historical development of segregation in the public schools this book will nevertheless be useful as a source for further work in this field.

How to Win Lawsuits Before Juries, by Lewis Lake. Prentice-Hall, Inc. 303 pp. $5.65.

Reviewed by ELMER GERTZ

Those of us who have presented many cases before courts and juries are inclined to be skeptical about any book which purports to tell us how to win our cases. We have already won and lost them in abundance, and we think we know that success in litigation hinges upon having a good case, to begin with, and preparation and luck and more preparation. But there can be no doubt that the young or inexperienced practitioner can gain much through the perusal of works like the present one. One bit of reading followed by two actual bouts before the bar may be taken as the proper formula. And, in any event, it is often interesting, even for an old hand, to read the experiences of others.

I read every word of this book, and often I felt that I had gained something, particularly when the author had ideas which ran counter to my own. Every lawyer has his own technique; and if they produce favorable results, who is to say that his methods are wrong?

A lawsuit reduces itself, according to this book, to a few fundamentals. So prepare your case that the direct examination of witnesses will enable the jury to follow your client's story with understanding and conviction. And make sure that your own witnesses know their stories in the resourceful, rather than tight, manner that will enable them to bear up under cross-questioning. As to your own cross-examination of the other side's witnesses, better forego it, unless you are sure of the answers that will be forthcoming. Each jury lawyer faces the same dilemma; he must try to tear down the stories of hostile witnesses, without destroying his own case in the process. That is why the book has more pages dealing with cross-examination than with any other subject. For the rest, it is a matter of choosing the right jurors, and making the right opening and closing arguments. Simple, is it not?—on paper.

The writer seems to believe that legal charm can be turned off and on; that lawyers are essentially Thespians, capable of assuming a manner that is not natural to them. We have all seen examples of lawyers who are capable of the exact smile or word that is supposed to appeal to jurors. I can't help feeling that jurors, being human, are capable of detecting histronics and insincerity. I would conclude that, when all is said and done, juries try to decide cases on their merits. The task for the lawyer, then, is to present his case in the manner best calculated to bring out its merits. If he is really familiar with his case, he will know better than any author how to do the job.

Law Institute Seeks Early Issues of The Decalogue Journal

The Chicago Law Institute, anxious to complete, before binding, a five year set of The Decalogue Journal, needs Numbers 2 and 3 of Volume 1. Members of our Society are urged to search their files for possible assistance to the Institute Library in its quest for the missing copies.

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THE DECALOGUE JOURNAL

A Publication of The Decalogue Society of Lawyers

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WHAT IS THE LAW?: Ancient lawgivers claimed the gods inspired their statutes, and men obeyed them from fear and faith. Then came the great Codes and Indexes of the Roman and Greek emperors. Then, after the Dark Ages, came a new approach, the reliance on usage and the patient, tolerant mood of the English Common Law, ultimately transmitted to America and the Empire.

THOMAS JEFFERSON (1743-1826): The most omnidextrous of American Presidents broke down the ancient English land practices of primogeniture and entail in Virginia, and insisted on a liberal philosophy for the new American Republic: *"The execution of the laws is more important than the making of them."*

THE EARL OF MANSFIELD (1705-1793): This mediocre eighteenth-century politician became a great Chief Justice, extending the English Constitution to the growing Empire: *"The law does not consist in particular instances and rules, but the law consists of the principles which govern specific cases as they arise."*

ST. THOMAS AQUINAS (1227-1274): The king of the Schoolmen—enormous in both mind and body—this Catholic theologian wrote the "Summa Theologiae" to systematize the whole corpus of medieval knowledge: *"Law: an ordinance of reason for the common good, made by him who has care of the community."*

JUSTINIAN THE GREAT (483-565): One of the most ambitious of the Byzantines, the Emperor Justinian sought to patch up his empire's frontiers and rally her resources; in addition to numerous edifices and military campaigns he supervised a new legal code: *"The safety of the state is the highest law."*

ALEXANDER HAMILTON (1757-1804): Washington's brilliant aide was primarily a financier and politician, but his *Federalist* essays were instrumental in encouraging aggressive claims for the Central Government: *"The complete independence of the courts of justice is peculiarly essential in a limited Constitution."*

SOLON (638 B.C.?-538 B.C.): Perhaps the first constitution-maker, Solon reorganized the Athenian Republic: "[*Solon said*] *that laws are like cobwebs, for if any trifling or powerless thing fell into them they held it fast; while if it were something weightier it broke through them and was off*" (Diogenes Laertius).

SIR WILLIAM BLACKSTONE (1723-1780): More of a legal philosopher than a pioneering judge, in a time of near-medieval severities, Blackstone is famous for his "Commentaries," which are still studied by all lawyers of the English-speaking world: *"Mankind will not be reasoned out of the feelings of humanity."*

SIR EDWARD COKE (1552-1634): English lawyer and Chief Justice, who defended the common law against the prerogatives and immunities of the early Stuart kings, framing the famous "Petition of Rights": *"Reason is the life of the law; nay, the common law itself is nothing else but reason."*

HENRY DE BRACTON (?-1268): This early Norman-English ecclesiastic compiled a legal treatise mostly on the basis of the judicial system and innovations of England's great reformer-king, Henry II: *"It is a common saying that it is best first to catch the stag, and afterwards, when he has been caught, to skin him."*

JOHN MARSHALL (1755-1835): The powers and procedures of the modern Supreme Court were mainly established by Marshall, its greatest Chief Justice, who championed a strong and sovereign Central Government: *"That the power to tax involves the power to destroy* [*is*] *not to be denied."*

O. W. HOLMES, JR. (1841-1935): The beloved and influential "Great Dissenter," a Civil War veteran who survived to welcome FDR, commanded one of the finest literary styles of his time: *"The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law."*

Courtesy, *Saturday Review*